

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Improving Competitive Broadband Access to Multiple Tenant Environments)	GN Docket No. 17-142
)	
Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council)	MB Docket No. 17-91
)	
)	

REPLY COMMENTS OF STARRY, INC.

Starry, Inc. (Starry)¹ submits these reply comments highlighting the strong record support for the Federal Communications Commission’s (FCC or Commission) proposals to improve competition in Multiple Tenant Environments (MTEs).²

I. INTRODUCTION

As the record shows, incumbent providers systematically use contractual provisions in MTE access agreements to erect barriers to competition within MTEs. These provisions serve no legitimate purpose and are counter to the public interest and the Commission’s goals of stimulating infrastructure investment and improving consumers’ access to broadband services. The Commission’s proposals can meaningfully level the playing field without impact to building owners’ rights to manage their own properties, and we strongly urge the Commission to act quickly to improve MTE residents’ access to competitive services.

Starry believes that the solution lies in targeted rules and proactive collaboration between building owners and broadband providers. Building owners play a critical role in our nation’s broadband landscape; with more than 25% of Americans living in MTEs, building owners are the bridge in the relationship between broadband providers and customers in MTEs for a large

¹ Starry, Inc., is a Boston- and New York-based technology company that is utilizing millimeter waves to re-imagine last-mile broadband access as an alternative to fixed wireline broadband. Starry is currently deploying its proprietary fixed 5G wireless technology in the Boston; Washington, DC; Los Angeles; New York City; and Denver areas, with plans to expand to our presence to additional U.S. cities through 2019.

² *Improving Competitive Broadband Access to Multiple Tenant Environments; Petition for Preemption of Article 52 of the San Francisco Policy Code Filed by the Multifamily Broadband Council*; GN Docket No. 17-142, MB Docket No. 17-91; Notice of Proposed Rulemaking and Declaratory Ruling, FCC No. 19-65 (rel. July 12, 2019) (*NPRM*).

portion of the population.³ In today's world, where access to high-quality, affordable broadband is critical for full participation in our communities, building owners and broadband providers should be incentivized to work collaboratively to ensure that consumers who live in MTEs have unfettered access to competitive options for high-quality broadband services. Unfortunately, incumbent providers have exploited their relationship with building owners for only their gain, and often at the long-term detriment to building owners and their residents.

Starry respects building owners' rights to manage their properties to the benefit of their residents (and their investors), and we have worked collaboratively with building owners to successfully deploy our services across five markets today. We believe that broadband is a social good and we strive to bring our service to all residents in MTEs across our markets and we aim to bring our service dozens of additional markets in the near term.⁴ We also believe access to quality broadband at a reasonable price should be universal, and we work with owners of affordable housing MTEs to bring our Starry Connect service to their buildings, offering a low cost, high quality broadband service that is only \$15 per month for a 30 Mbps symmetrical connection.⁵

To be clear, we do not suggest that the Commission should require mandatory access to MTEs or force building owners to act in ways that would be detrimental to their properties or residents. Instead, we suggest the Commission adopt reasonable and targeted rules focused on addressing incumbent providers' systematic efforts to block competition in an area in which the Commission has already regulated.

As the record suggests, the Commission can enhance competition within MTEs by leveling the playing field and prohibiting tiered and exclusive revenue share, exclusive marketing, exclusive wiring, exclusive rooftop access, and all other exclusive provisions in

³ See Comments of CenturyLink, GN Docket No. 17-142 at 3-5 (filed Aug. 30, 2019); Comments of Starry, Inc., GN Docket No. 17-142 at 5 (filed Aug. 30, 2019) (citing U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimate, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_5YR_B25024&prodType=table; U.S. Census Bureau, *2017 National - Housing Unit Characteristics - All Housing Units*, https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html#?s_areas=a00000&s_year=n2017&s_tableName=Table0&s_byGroup1=a16&s_byGroup2=a1&s_filterGroup1=t1&s_filterGroup2=g1&s_show=S).

⁴ See <https://starry.com/starryconnect>.

⁵ We note that the Real Estate Associations falsely claim that Starry chooses to serve only buildings of 75 units or more, based on a data point Starry provided in its *NOI* comments that was related to its experience with buildings of that size. The statement Starry made in its *NOI* comments was *very clearly* a specific data point about buildings of 75 units or more and was neither explicitly nor implicitly an assertion that we *only* serve buildings of that size. See Comments of The Real Estate Associations, GN Docket No. 17-142 (filed Aug. 30, 2019); Comments of Starry, Inc., GN Docket No. 17-142 at 5 (July 24, 2017). At no point have we asserted that we only serve buildings of a certain size – we provide service to buildings of all sizes, with varying demographics.

agreements with MTEs. We believe the Commission can enhance and support this collaboration through the Gigabit Ready program Starry suggested in its initial comments, which would provide owners, developers, and residents a clear checklist and self-certification of buildings that are wired for high-speed broadband and have neutral and open access to infrastructure for all providers.⁶

II. THE RECORD DEMONSTRATES A SYSTEMATIC EFFORT BY INCUMBENT BROADBAND PROVIDERS TO BLOCK COMPETITIVE PROVIDERS' ACCESS TO MTEs

As Starry explained in its comments, incumbent broadband providers have created layers of complicated legal and economic barriers to new entry into MTEs in markets all across the U.S. through a variety of anti-competitive provisions in access agreements.⁷ These provisions serve no legitimate purpose and are designed only to block competition within MTEs. Instead of competing on a level playing field on service, quality, and price, incumbents have co-opted their relationship with property owners to restrict residents' access to competitive broadband services. The record shows tiered revenue sharing agreements and exclusive agreements of all kinds, including exclusive marketing, exclusive wiring, exclusive revenue, and exclusive rooftop access have a detrimental impact on competition within MTEs.⁸

WISPA explains that the obstacles its "members face to providing service to MTEs are many and include incumbents' use of revenue sharing agreements, exclusive wiring and exclusive marketing agreements, preferences by building property owners/management to do business with traditional phone or cable companies, and other market-distorting practices."⁹ Similarly, CCA explains "in some circumstances, exclusivity agreements can foreclose competition because competitors have no viable alternative to the building's facilities to serve consumers."¹⁰

CenturyLink, a large local exchange carrier, explains in detail the effect of anti-competitive provisions that it faces in both residential and commercial MTEs. It highlights three

⁶ Starry Comments at 13-14.

⁷ *Id.* at 5-7.

⁸ The Real Estate Associations comments include data regarding the number of broadband providers across a handful of different real estate portfolio companies and the percent of access agreements that have exclusive marketing provisions. For example, across the five portfolio companies listed, four indicate that at least one-quarter of their portfolios are subject to exclusive marketing provisions. Real Estate Associations Comments at 66.

⁹ Comments of the Wireless Internet Service Providers Association (WISPA), GN Docket No. 17-142 at 3-4 (filed Aug. 30, 2019).

¹⁰ Comments of the Competitive Carriers Association, GN Docket No. 17-142 at 3 (filed Aug. 30, 2019).

trends: “excessive access fees, MTE owners and tenants that are misinformed about their rights and responsibilities under applicable preferred provider arrangements, and MTE owners that prohibit on-net service except by their preferred provider.”¹¹ It argues that “[n]one of these trends serves the interests of tenant subscribers, and each directly conflicts with the Commission’s goal of facilitating investment and competition in MTEs.”¹²

With respect to exclusive rooftop agreements, Common Networks explains that its “experience suggests exclusive rooftop agreements remain prevalent,” and it provides a detailed example from a deployment in its service area.¹³ With respect to revenue share, Common also explains: “Despite Common’s cost advantage, incumbents with deeper pockets can offer revenues shares that far exceed the MTE’s cost of providing service and far exceed what smaller competitive providers can offer.”¹⁴

In addition, INCOMPAS, which represents a large cross section of competitive providers, argues that exclusive arrangements “can lock residents into contracts for slower service throughout the duration of their time in the building. The problem is exacerbated due to the growing shortage of housing in urban environments.”¹⁵

Opponents to the Commission’s proposals argue in part that these types of agreements are necessary to offset the cost of building wiring installation and maintenance.¹⁶ As Starry explained and the record supports, revenue share that is associated with the cost of installing and maintaining wiring is reasonable.¹⁷ The wiring is part of the building infrastructure that providers use to offer service, and it is reasonable for building owners to ask providers to share in the costs of installing and maintaining the wire and associated infrastructure. It is also reasonable for owners to ensure that their access agreements set forth a provider’s responsibility to share in the maintenance of the wire (both in terms of cost and workforce). However, exclusive revenue share agreements and tiered revenue share that is associated with a specific penetration level are specifically designed to prevent or disincentivize an owner from allowing competitive entry into

¹¹ Comments of CenturyLink, GN Docket No. 17-142 at 5-6 (filed Aug. 30, 2019).

¹² *Id.*

¹³ Comments of Common Networks, Inc., GN Docket No. 17-142 at 4 (filed Aug. 30, 2019).

¹⁴ *Id.* at 5

¹⁵ Comments of INCOMPAS, GN Docket No. 17-142 at 6 (filed Aug. 30, 2019).

¹⁶ See Real Estate Associations Comments at 78-81.

¹⁷ See Starry Comments at 7; INCOMPAS Comments at 13; WISPA Comments at 9. We also note that the Real Estate Associations assert that revenue share is a “modest compensation to help offset development and infrastructure deployment costs.” Real Estate Associations Comments at iv.

an MTE. These types of revenue share are unrelated to the cost to the building and serve no purpose other than to block competition and should be prohibited.

Opponents also argue that these anti-competitive provisions are necessary to incentivize providers to enter buildings to provide service; this ignores broadband providers' basic financial model.¹⁸ Broadband providers – incumbents and new entrants alike – generate revenue by providing service to subscribers. Investors in broadband providers have an expectation of revenue growth, and therefore subscriber growth, over time. Broadband providers need access to potential customers in MTEs to generate revenue and are incentivized by their need for growth to enter buildings to provide service to residents, even if they are not guaranteed a certain level of revenue.

The existence of competitive providers proves this out – we are actively attempting to newly serve residents in MTEs across the country without the revenue protections afforded by exclusive provisions. Instead, Starry wins subscribers in MTEs by offering a quality service at an affordable price, and we retain customers by meeting or exceeding their expectations in every interaction they have with Starry. Unfortunately, in many instances, Starry's and other competitive providers' ability to effectively offer a competitive choice in some MTEs is impeded by historic exclusive agreements that distort the market to incumbents' benefit.

Ultimately, if the Commission decides to not adopt its proposals and effectively normalize exclusive agreements and anti-competitive forms of revenue share, it will create a race to the bottom where providers will be incentivized to pursue the most aggressive and anti-competitive arrangements that benefit only their own interests.¹⁹

III. CONCLUSION

Starry strongly supports the Commission's proposals to ensure MTE residents have access to competitive choice for broadband services. By prohibiting tiered and exclusive revenue share, exclusive marketing, exclusive wiring, exclusive rooftop, and all other exclusive provisions, the Commission can fix a marketplace failure and improve competition to 35 million households in communities all across the U.S.

¹⁸ See Comments of NCTA – The Internet & Television Association, GN Docket No. 17-142 at 4 (filed Aug. 30, 2019).

¹⁹ See, e.g., Comments of the Community Association Institute, GN Docket No. 17-142 at 4-5 (filed Aug. 30, 2019) (“For example, CAI documented a case in which a communications provider demanded an association submit updated resident information every 60 days and agree to contact local law enforcement if representatives from competitor providers entered the association.”).

Respectfully submitted,
Starry, Inc:

Virginia Lam Abrams
Senior Vice President, Communications &
Government Relations

Brian Regan
Vice President, Legal, Policy, and Strategy

Starry, Inc.
38 Chauncy Street, 2nd Floor
Boston, Massachusetts 02111

September 30, 2019